



Phillips Lytle LLP

May 27, 2022

Hon. Katherine Polk Failla
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

MEMO ENDORSED

Re: London Luxury LLC v. HSBC Bank USA, N.A.
Case No. 1:22-cv-04235-KPF

Dear Judge Failla:

We represent Defendant HSBC Bank USA, N.A., in the above-captioned matter and submit this response in opposition to the letter request filed by Plaintiff London Luxury LLC for a stay pending appeal. (Dkt. 19).

Plaintiff's request for a stay pending appeal, in addition to the stay the Court already provided, is simply a request for reconsideration of the Court's order denying a temporary restraining order ("TRO"). Indeed, Plaintiff's request for a stay pending appeal would effectively grant a TRO for a far lengthier period than Plaintiff originally sought in its TRO application. But Plaintiff has offered no basis for the Court to reverse its thorough and considered order denying that relief.

Contrary to Plaintiff's assertion, there is real harm worked by further delay. The beneficiaries of the letter of credit bargained for payment pending the resolution of any dispute. "[T]o prevent the beneficiary from obtaining the money while the court decides the underlying contract question may deprive the beneficiary of the very benefit for which he bargained, namely that any such underlying contract dispute will be resolved while he is in possession of the money." *TC Skyward Aviation U.S., Inc. v. Deutsche Bank AG, New York Branch*, 557 F. Supp. 3d 477, 488 (S.D.N.Y. 2021) (quotation omitted). Further delay could threaten HSBC with liability for failure to pay the beneficiaries, including interest. See UCC § 5-111(a), (d). Plaintiff requested that HSBC issue a letter of credit because it sought "to substitute the financial integrity of a stable credit source" for its own." *Alaska Textile Co. v. Chase Manhattan Bank, N.A.*, 982 F.2d 813, 815 (2d Cir. 1992). Barring payment would undermine the very financial integrity that HSBC has developed and maintained.

Plaintiff's conclusory assertions of irreparable harm were correctly rejected by this Court. Plaintiff does not offer any reason to conclude that funds paid to the

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beneficiaries would be dissipated. Nor has Plaintiff provided any basis for the Court to reconsider its ruling as to the likelihood of success on the merits.

At the close of yesterday's conference, this Court indicated it would consider extending a stay if both parties agreed to do so. HSBC promptly advised Plaintiff it would not consent to such an extension. HSBC respectfully requests the motion for stay be denied.

Respectfully,

By /s/Joshua Glasgow

cc: All counsel of record (*via CM/ECF*)

Doc #10449821

For the reasons outlined in the Court's oral decision of May 26, 2022, as supplemented by Defendant's above submission, Plaintiff's application for an extension of the stay of this Court's May 26, 2022 Order is hereby DENIED. Given the Court's ruling, any further relief sought by Plaintiff related to the instant emergency application must be directed to the Second Circuit Court of Appeals.

The Clerk of Court is directed to terminate the pending motion at docket entry 19.

Dated: May 27, 2022
New York, New York

SO ORDERED.

A handwritten signature in blue ink that reads "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE